IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.7972 OF 2004

The Jasai Grampanchayat
through its Sarpanch. .. .. Petitioner

Versus

The State of Maharashtra,
through the Minister,
Rural Development and Water
Conservation Department & ors. .. Respondents

Mr.M.S.Karnik for petitioner.

Mrs.S.S.Bhende, AGP for respondent No.1.

Mr.C.G. Gavnekar with Mr.G.S.Hiranandani and
Ms.Deepa Sawant for respondent No.2.

Respondent Nos.3, 4 and 5 are served.

CORAM : H.L. GOKHALE &
S.P. KUKDAY, JJ.

DATE :15th June 2005

ORAL JUDGMENT : (Per H.L. Gokhale, J.)

1. Heard the learned Counsel for the parties.

2. This petition filed by the Jasai Grampanchayat situated in Taluka Uran of District Raigad, seeks to challenge the order dated 18th November 2003 passed by the Minister of Rural Development and Water Conservation Department of the State of Maharashtra under Section 155 of the Bombay Village Panchayats Act, 1958 (hereinafter referred to as "the said Act"). It also seeks to

challenge the Corrigendum dated 10th March 2004 issued by respondent No.1-State of Maharashtra, correcting the earlier Government Notification dated 1st February 1995. By the first order dated 18th November 2003, the Minister allowed the Revision filed by respondent No.2-Dhutum Grampanchayat under Section 155 of the said Act, whereby it is permitted to levy and collect taxes on the properties of Indian Oil Corporation situated in the areas covered by the village circles known as Shemtikhar, Valtikhar and Muthekhar. By the subsequent Corrigendum dated 10th March 2004, the earlier Notification is corrected to delete these areas from the territory of village Jasai.

3. Facts leading to this petition are as follows:-

. It is an admitted position that one village Chirle was bifurcated and certain territories of this village Chirle were merged into village Dhutum Pada. The territories which were bifurcated and merged into Dhutum Pada were Shemtikhar, Valtikhar and Muthekhar. It was done after following the procedure provided under Section 4 of the said Act, and thereafter, by

issuing a Notification on 14th October 1966. It so happened that later on with the inclusion of Part-IX in the Constitution of India with effect from 1st June 1993, a Notification came to be issued laying down the areas of various villages. This Notification dated 1st February 1995 issued by the Government of Maharashtra under Article 243(g) of the Constitution included these three small territories viz. Shemtikhar, Valtikhar and Muthekhar in the village Jasai. That is seen at Entry 215 of this Notification. Sometimes in the year 1997, the Indian Oil Corporation set up its depot and some other establishments in these three small areas. Respondent No.2-Grampanchayat issued a bill on these properties in March 2001. The Indian Oil Corporation filed an Appeal under Section 124(5) of the said Act, first to the Taluka Panchayat Samiti and the Taluka Panchayat Samiti reduced the quantum of tax from Rs.80.81 Lacs to Rs.21.75 Lacs. Respondent No.2-Dhutum Grampanchayat filed a Second Appeal under the same provisions to the Standing Committee of the Zilla Parishad. The Zilla Parishad referred to this Notification of 1995 and came to the conclusion that it is the petitioner-Grampanchayat which is entitled to collect those taxes.

4. Respondent No.2-Dhutum Grampanchayat filed a Revision against this order of the Zilla Parishad under Section 155 of the said Act to the State Government. During the pendency of this Revision, respondent No.2-Dhutum Grampanchayat learnt that the petitioner-Grampanchayat was about to collect some amount of Rs.20 Lakhs from the Indian Oil Corporation. It is in those circumstances that it filed Writ Petition No.1180 of 2003 to seek a stay on this collection. The High Court noted that the dispute was essentially between the petitioner and the 2nd respondent-Grampanchayat and, therefore, it directed the 2nd respondent-Grampanchayat to join the petitioner as respondent in the pending Revision. This petition was thus disposed of on 27th June 2003 by directing the Minister to decide the matter after hearing all concerned.

5. It appears that the Minister proceeded to hear all the parties thereafter and by his order dated 18th November 2003, came to the conclusion that these three villages wherein the Indian Oil Corporation had put up its establishments, were in fact covered in the territory of the Dhutum Grampanchayat. He allowed the Revision and directed the Indian Oil Corporation to pay the

taxes to the Dhutum Grampanchayat.

6. The petitioner-Grampanchayat felt aggrieved by this order passed by the Minister and, therefore, filed Writ Petition No.9140 of 2003. However, during the pendency of this petition, the impugned Notification dated 10th March 2004 came to be issued by respondent No.1-State of Maharashtra, which contains the corrigendum and whereby the notification issued earlier on 1st February 1995 came to be corrected deleting the three small village areas which were included in the area of the petitioner-Grampanchayat. In view of this development, the petitioner withdrew that writ petition on 16th June 2004 and has now filed the present petition to challenge both the orders viz. one under Section 155, dated 18th November 2003 and the Corrigendum dated 10th March 2004.

7. Mr.Karnik, learned Counsel appearing for the petitioner, submitted that the Notification of 1995 laid down the territory of the petitioner-Grampanchayat. This territory has been laid down under Article 243(g) of the Constitution, which Article says that village means a village specified by the Governor by the

public notification for the purpose of this Part and includes a group of villages so specified. His submission is that once this notification was issued, these three small villages were included in the territory of the petitioner-Grampanchayat. They have now subsequently been deleted by the Notification of 10th March 2004. He submits that this notification has been issued without hearing the petitioner-Grampanchayat. During the interregnum period from 1995 and 2004, the particular territory will have to be held as part of the petitioner-Grampanchayat. He further submits that the corrigendum was bad in law. Similarly he criticizes the Minister's order dated 18th November 2003 by submitting that at that time the Minister was deciding only a Revision under Section 155 concerning the taxes and he had no business to go into the question of territory of either of the villages.

8. Mr.Gavnekar, learned Counsel appearing for respondent No.2-Dhutum Grampanchayat, on the other hand, submits that at all material times, respondent No.2-Grampanchayat had included within its territory these three small areas. This was clear from the 1966 Notification. He further submits that for deleting any area from the

village area, the procedure under Section 4 of the said Act was mandatory. At no point of time that procedure had been followed and, therefore, the 1995 Notification laying down the territory of the petitioner-Grampanchayat could not take within its sweep the territory which formed the part of the 2nd respondent-Grampanchayat. That apart, he submits that the petitioner-Grampanchayat had no other evidence to show that this territory formed its part at any point of time except the 1995 Notification.

9. We have considered the rival submissions of the parties. It is an undisputed fact that as far as the territory of these three small villages is concerned, it was included in the Dhutum Grampanchayat right from 1966 when the village Chirle was bifurcated. The petitioner-Grampanchayat has no evidence to contend that this territory was its part except the Notification dated 1st February 1995. The entire submission of the petitioner is on the basis of this notification. As against that as far as the 2nd respondent-Dhutum Grampanchayat is concerned, right from 1966, it was governing this territory. The notification which was issued in the year 1966 was issued after following due

process of law viz. after consultation with all concerned under Section 4 of the said Act. This Section 4 provides as follows:-

" Section 4. Declaration of village

(1) Every village specified in the notification issued under clause (g) of article 243 of the Constitution of India shall be known by the name of that village specified in that notification.

Provided that, where a group of revenue villages or hamlets or other such administrative unit or part thereof is specified in that notification to be a village, the village shall be known by the name of the revenue village, hamlet or, as the case may be, administrative unit or part thereof, having the largest population.

(2) Where the circumstances so require to include or exclude any local area from the the local area of a village or to alter the limits of a village or that a local

area shall cease to be a village, then the notification issued in the like manner after consultation with the Standing Committee and the panchayat concerned, at any time, may provide to -

(a) include within, or exclude from any village, any local area or otherwise alter the limits of any village; or

(b) declare that any local area shall cease to be a village;

and thereupon the local area shall be so included or excluded, or the limits of the village so altered or, as the case may be, the local area shall cease to be a village. "

10. This section has two sub-sections. The first sub-section provides for the name of the village and it provides that it shall be known by the name that is specified in the notification under Article 243 (g) of the Constitution of India. However, as far as area of the village is concerned, it is sub-section (2) which is the material one and it provides as to how any

particular area is to be included or excluded from the local area of a village and that the same is to be done after consultation with the Standing Committee and the Panchayat concerned. That had been done in the year 1966. All that has happened in the year 1995 when a notification is issued after coming into force Part IX of the Constitution is to issue a notification giving the name of the petitioner-Grampanchayat though erroneously including the three small villages therein. The notification does say that the village mentioned in column-1 of the Schedule of that notification will be the village for the purposes of Part IX of the Constitution. However, the fact remains that as far as the territory of the village Dhutum is concerned, the same has not been in any manner re-allocated by resorting to the procedure under Section 4 and, therefore, when this was brought to the notice of the Government, the Government issued a Corrigendum on 10th March 2004 correcting the notification issued in 1995. This was essentially to correct the error that had stepped in while issuing the earlier notification. The very fact of sub-section (2) of Section 4 of the Bombay Village Panchayats Act providing for consultation with the Standing Committee and the Panchayat either while including or excluding any

local area in a village implies that all such concerned villages or the Panchayat or the Standing Committee will have some relevant material to offer as to why a particular territory should be a part of a concerned Panchayat. That is an aspect to be gone into and it cannot be a matter of mere mechanical issuance of a notification whereby the territory of a village could be transferred to another village. This is what has happened while issuing the notification in 1995. The Government has owned the mistake that had occurred and corrected it. The power to issue a notification certainly includes the power to correct and rectify, if there is any error therein. That is all the Government has done by issuing the subsequent Notification of 10th March 2004. We do not find any error therein.

11. As far as the order dated 18th November 2003 passed by the Minister allowing the Revision filed by respondent No.2 is concerned, it is true that there is a discussion therein as to what should be the territory of either of the two villages. However, that was essentially for consideration of the authority to collect the taxes. It is only as a part of that decision that the aforesaid discussion occurs in that order. It

cannot be read as meaning anything more. We do not find any error in the order passed by the Minister also. The petition is, therefore, dismissed.

(H.L. GOKHALE, J.)

(S.P. KUKDAY, J.)